OCT 23 1978

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-188

THE BOARD OF COMMISSIONERS OF THE CITY OF CHATTANOOGA, ROBERT KIRK WALKER, Mayor, CHARLES "PAT" ROSE, and GENE ROBERTS, Commissioners, and WILLIAM H. ZACHRY, City Auditor,

Petitioners,

vs.

JAMES JONATHAN MAPP, et al.,

Respondents.

PETITIONERS' SUPPLEMENTAL BRIEF

EUGENE N. COLLINS
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PETITIONERS' SUPPLEMENTAL BRIEF

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1. PURPOSE OF BRIEF

Pursuant to Rule 24(5) of the United States Supreme Court, petitioners file this supplemental brief to bring to the attention of the Court certain matters not available at the time of the filing of their Petition for a Writ of Certiorari.

2. SUMMARY OF LEGAL ISSUE SUPPLEMENTED HEREIN

In the Petition for the Writ of Certiorari, it was shown that the municipal legislative officials were made parties to this action for the first time in January, 1972. It was shown that the District Court denied their motion to clarify the fiscal responsibility of the City of Chattanooga relative to the implementation of a desegregation plan, despite the fact that these petitioners were *not* parties when the desegregation order was entered and did *not* have an opportunity to be heard with regard to the necessity or the design of the new desegregation plan. The Court of Appeals failed to reach this issue raised on these petitioners' appeal there. It is asserted that petitioners have been denied their due process rights by being bound by a decision in which they have had no opportunity to be heard.

3. NEW MATTER

During the pendency of their own Petition for a Writ of Certiorari, the autonomous Board of Education of the City of Chattanooga on July 20, 1973, filed a "Motion for Further Relief: To Adjust Amended Plan of Desegregation Filed June 16, 1971". (Appendix p. 4.) After the exchange of briefs and oral argument, the District Court on August 16, 1973, agreed to hear proof on the motion and ordered a hearing to commence on September 10, 1973. Thereafter, this date was changed until October 1 and then October 2, 1973. These entries appear of record on the certified copy of the docket sheet of the District Court in Appendix p. 8.

On September 13, 1973, these petitioners filed a "Motion to Intervene", a "Petition to Intervene" and a "Motion to Suspend the Rules" as to time for response. The

purpose of these motions was to ask the District Court to allow these petitioners to participate in the further hearing on the desegregation plan for which they may be held fiscally responsible. In addition, the District Court was asked for an expeditious decision on these motions to allow counsel for petitioners time to prepare.

Despite the absence of any opposition from the plaintiffs-respondents, the District Court *never ruled* in any way on these motions and commenced its hearing on the School Board's motion from and after October 2, 1973. The docket sheet attached hereto reflects that said hearing continued through October 10, 1973, (Appendix p. 9); and counsel states on information and belief that the hearing in fact continued through October 12, 1973, and that plaintiffs-respondents were also allowed to present witnesses in opposition to the motion of the School Board for modifications.

Petitioners submit that the District Court has herein failed to correct its error of refusing to allow intervention in 1972 by these petitioners. This earlier error was urged by these petitioners on the Court of Appeals in their appeal and was ruled upon by the Court of Appeals in its opinion of April 30, 1973. The District Court now having twice denied these petitioners a chance to be heard on the desegregation plan, the failure of the Court of Appeals to decide this issue is more grievous than before the latest hearing in the District Court, and this Honorable Court should grant the Writ of Certiorari to review the decision of the Court of Appeals of the Sixth Circuit for this reason, if for no other.

Respectfully submitted,

EUGENE N. COLLINS
City Attorney

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE SOUTHERN DIVISION

CIVIL ACTION NO. 3564

JAMES JONATHAN MAPP, etc.

vs.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al.

MOTION FOR FURTHER RELIEF: TO ADJUST AMENDED PLAN OF DESEGREGATION FILED JUNE 16, 1971

Comes the defendant Chattanooga Board of Education, by and through its legal counsel, and moves the Court:

(1) to modify the injunctive decree of July 26, 1971 approving the Amended Plan of Desegregation submitted by defendant on June 16, 1971, such modification being required, in the unanimous judgment of defendant Board, because of changed circumstances since said Amended Plan was designed and judicially approved, and specifically the actual response of students to the new assignments as a result of the partial implementation of the 1971 Amended Plan;

(2) to provide for an evidentiary hearing so that defendant Board may introduce proof in support of its unanimous decision to seek such modification of the 1971 Amended Plan of Desegregation and that such modification is consistent with, and required by, the constitutional obligation of defendant Board to assume primary responsibility for finding solutions to school desegregation that are practical, reasonable and feasible.

The modifications requested are set forth in detail in Exhibit A attached hereto being Item XV of the Agenda for the July 18, 1973 meeting of the Chattanooga Board of Education [with appendix on p. 37 entitled "Comparison of Tenth Day Pupil Enrollment For System By Year and by Race," and an appendix (pp. 38-47 inclusive) entitled "Proposed Adjusted Attendance Zones"] which was unanimously adopted by defendant Board at a regular monthly meeting held on July 18, 1973.

This 20th day of July, 1973.

RESPECTFULLY SUBMITTED:

WITT, GAITHER, ABERNATHY & WILSON

By: /s/ RAYMOND B. WITT, JR.

Attorneys for defendant Chattanooga Board of Education
1100 American National Bank Building
Chattanooga, Tennessee 37402

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion for Further Relief: To Adjust Amended Plan of Desegregation Filed June 16, 1971 was mailed, postage prepaid, to Avon N. Williams, Jr., 404 James Robertson Parkway, Nashville, Tennessee 37219, and Miss Sylvia Drew, Jack Greenberg, James N. Nabrit, III, and Norman J. Chachkin, 10 Columbus Circle, New York, New York 10019, attorneys for plaintiffs, and Eugene N. Collins, City Attorney, 400 Pioneer Bank Bldg., Chattanooga, Tenn., this 20th day of July, 1973.

WITT, GAITHER, ABERNATHY
& WILSON

By: /s/ RAYMOND B. WITT, JR.

DOCKET ENTRIES IN CASE NO. 3564 Pages 28 & 29

Date	Proceedings
1972	
12- 8	Exhibits 1-148 withdrawn by Atty. Avon N. Williams (Russell B. Ennix) for purposes of appeal. Receipt in file.
12-11	Response of Plaintiffs to Defendants' Motion to supplement Record filed. Service by counsel.
12-11	Next-above document forwarded to U. S. Court of Appeals as supplement no. 25.
12-15	Acknowledgment of receipt of supplements 21-24 received from U. S. Court of Appeals and filed.
12-18	Acknowledgment of receipt of supplement no. 25 received and filed. (No. 72-1943)
1973	
7-20	Motion by Board of Education for Further Relief, with Brief in support, filed. Service by counsel.
7-30	Motion (in form of telegram) by plaintiff for extension of time through Aug. 10 within which to respond to defendants' motion for further relief filed. (Counsel for defendants, Mr. Witt, notified by telephone by deputy clerk of the filing of the motion)
7-30	ORDER allowing extension of time through Aug. 10 for pltf. to respond to defendants' motion for further relief filed. Service by clerk to Avon Williams and Raymond Witt
8-10	Opposition of Plaintiffs to Motion for Further Relief filed by defendants on July 20, 1973, filed. Service by counsel.

8-14 Came the plaintiffs, Mr. & Mrs. James Mapp, in person and by counsel and came the defendants by counsel. Argument by counsel on the question of jurisdiction only to present the motion to amend the order previously entered in this case. At the conclusion of argument the matter was taken under advisement by the Court. Wilson, D.J. Order book 9, p. 292.

8-16 ORDER, WILSON, D.J. setting further hearing on defendant's motion to modify to commence on Sept. 10, 1973 and to continue from day to day until completed, entered Order Book 9, p. 303 and filed. Service by clerk to counsel of record.

8-22 Motion by pltf. to postpone hearing until a date subsequent to Oct. 1, 1973, and for other relief, filed. Service by counsel.

8-28 ORDER, WILSON, D.J. changing trial date from 9/10/73 to 10/1/73 filed. Service by clerk to Avon Williams, John Henniss & Eugene Collins.

9-12 Motion to Reset hearing from Oct. 1, 1973, to Oct. 2, 1973, filed. Service by counsel.

9-13 Motion by City of Chattanooga to be allowed to file petition to intervene, filed. Service by counsel.

9-13 Motion by City of Chattanooga to suspend the rules, with brief in support of next above motion to intervene and motion to suspend rules, filed. Service by counsel.

9-14 Order setting evidentiary hearing on 10/2/73 filed. Ser. by clk. to counsel of record.

9-18 Clerk's copy of hearing of 8/14/73, filed.

10- 3 Came the parties in person and by counsel, Counsel for pltf. stated he was not ready. Deft. ready to proceed. Part of defts. proof heard. Court re-

cessed until 9 a.m., Thursday, October 4, 1973. WILSON, D.J. Order Book 9, p. 442. (Carol White, Court reporter)

10- 4 Came the same parties as of Wednesday (except for Eugene Collins, Atty.) and the evidentiary hearing was resumed. Part of defendants' proof heard. Court recessed at 4:45 until 9 a.m., Friday, October 5, 1973. WILSON, D.J. (Carol White, ct. rptr.) Order Book 9, p. 443.

10- 5 Came the same parties as of Thursday, Oct. 4, 1973, and the evidentiary hearing was resumed. Direct examination by Mr. Henniss to Dr. Henry continued; cross-examination by pltf. Motion by pltf. to discontinue hearing; motion denied. Court adjourned until 9 a.m., Tuesday, October 9, 1973. WILSON, D.J. Order Book 9, p. 448. Carol White, ct. rptr.

10- 5 Summons ret. executed 10-2-73 on James Rogers Mapp, DUSM, ($2.00) and filed.

10- 9 Came the same parties as of Friday, Oct. 5, 1973, and the evidentiary hearing was resumed. Deft's proof continued. Court recessed until 9 a.m., Wednesday, October 10, 1973. WILSON, D.J. Order Book 9, p. 459.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIVIL ACTION NO. 3564

JAMES JONATHAN MAPP, Etc.

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al.

PETITION TO INTERVENE

(Filed September 13, 1973.)

The City of Chattanooga, acting by and through its governing body, the Board of Commissioners, does hereby and herewith petition the Court for leave to present proof and cross-examine witnesses at the hearing scheduled to commence October 1, 1973, in support in principle of the plan to be presented by the Board of Education. The petitioner believes that it will be able to present independent proof on the causes of the problems which the Board of Education will present to the Court, and that it has a peculiar governmental interest in this proceeding based on its fiscal responsibility for any plan ordered by the Court and its duty to protect the health, safety, and welfare of all of its citizens.

Respectfully submitted,

EUGENE N. COLLINS, City Attorney
GARY D. LANDER, Special Counsel
Counsel for City of Chattanooga
400 Pioneer Building
Chattanooga, Tennessee 37402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy hereof has been placed in the United States Mail addressed to Avon N. Williams, Jr., 1414 Parkway Towers, Nashville, Tennessee 37219; Jack Greenberg, James M. Nabrit, III, Norman J. Chachkin, and Sylvia Drew, 10 Columbus Circle, Suite 2030, New York, New York 10019, Attorneys for Plaintiffs; and Raymond B. Witt, Jr., 1100 American National Bank Building, Chattanooga, Tennessee 37402, Special Counsel for the Board of Education of the City of Chattanooga, and Glenn T. McColpin and Floyd E. Morgan, Professional Building, Chattanooga, Tennessee 37402, Attorneys for John B. Grannan, Jr., this the ..... day of ....., 1973.

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIVIL ACTION NO. 3564

JAMES JONATHAN MAPP, Etc.

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al.

MOTION TO SUSPEND THE RULES

(Filed September 13, 1973.)

The City of Chattanooga, acting by and through its Board of Commissioners, moves the Court for an order suspending the Rules as to time for response and opposition to its Motion to Intervene on the ground that its counsel will of necessity require as early a decision thereon as is possible in order that counsel may prepare for the hearing which is scheduled to commence on October 1, 1973.

Respectfully submitted,

EUGENE N. COLLINS, City Attorney
GARY D. LANDER, Special Counsel
Counsel for City of Chattanooga
400 Pioneer Building
Chattanooga, Tennessee 37402

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION

CIVIL ACTION NO. 3564

JAMES JONATHAN MAPP, Etc.

v.

THE BOARD OF EDUCATION OF THE CITY OF CHATTANOOGA, TENNESSEE, et al.

MOTION TO INTERVENE

(Filed September 13, 1973.)

The City of Chattanooga, a municipality existing under the laws of the State of Tennessee and acting by and through its Board of Commissioners, hereby moves the Court for an order pursuant to Rule 24(a)(2), Fed. R. Civ. Proc., to allow it to intervene by its counsel in the pending further proceedings before this Court and to be allowed to file the Petition attached hereto which is in support in principle of the motion of the Board of Education heretofore filed and now set for hearing on October 1, 1973.

This request for leave to file the attached Petition is made without waiving any rights now being asserted and pursued before the United States Supreme Court, and all

rights and objections are hereby expressly reserved to any further orders or judgments of this Court, including the right of appeal, that may be rendered affecting the fiscal and governmental interests and rights of the City of Chattanooga without its participation.

The City would show unto the Court the following in support of this motion:

1. It is the responsible fiscal agency for levying taxes and appropriating public funds for the implementation of any plan of desegregation that may be ordered by the Court.

2. It is informed that the defendant Board of Education will present proof in support of a modification thereof.

3. The detrimental effects of the presently ordered Plan are reflected not only in the public school system but also in the City as a whole and affect the City Government's interest and duty to protect the health, safety and welfare of all of its citizens.

4. The plaintiffs heretofore sought to have the City and its Board of Commissioners joined as parties, and the Court did join them as parties at least for the purpose of enforcing and protecting prior judgments.

5. In *Goss* v. *City of Knoxville*, 340 F.Supp. 711, (E.D. Tenn. 1972), the trial proceedings were delayed for a period of about forty-five (45) days to allow plaintiffs to join that City and its governing body.

6. In *Citizens of Indianapolis for Quality Schools, Inc.* v. *U.S.*, — F.2d —, 41 U.S.L.W. 3365, (7th Cir. 1972), *cert. denied*, — U.S. —, 35 L.Ed.2d 271 (1973), the Court of Appeals remanded a school desegregation case to permit the intervention, in light of changed circumstances,

of a *citizens group* in further proceedings in a suit brought by the Federal Government against a school system.

Respectfully submitted,

EUGENE N. COLLINS, City Attorney
GARY D. LANDER, Special Counsel
Counsel for City of Chattanooga
400 Pioneer Building
Chattanooga, Tennessee 37402

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